

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TONE CREATIVE LLC,

Plaintiff,

-v-

1:21-CV-168

TONECREATIVE LLC,
JOSHUA EATMAN, WILBERT
MCKINLEY, III, and ERIC
KING,

Defendants.

APPEARANCES:

GRAVEL & SHEA, PC
Attorneys for Plaintiff
76 St. Paul Street, P.O. Box 369
Burlington, VT 05402

OF COUNSEL:

DANIEL J. MARTIN, ESQ.
CELESTE E. LARAMIE, ESQ.
CHASE WHITING, ESQ.

DAVID N. HURD
United States District Judge

ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

On February 11, 2021, plaintiff Tone Creative, LLC ("plaintiff") filed this action against defendants ToneCreative LLC, Joshua Eatman, Wilbert McKinley, III, and Eric King (collectively "defendants") alleging that they have formed and are operating a marketing and design company that infringes on plaintiff's registered trademark.

On May 11, 2021, the Clerk of the Court certified that defendants have failed to plead or otherwise defend against plaintiff's suit and are therefore in default. Dkt. No. 39. Plaintiff has since moved under Federal Rule of Civil Procedure ("Rule") 55 seeking the entry of a default judgment in its favor. Dkt. No. 40.

Upon review of the record and plaintiff's supporting submissions in light of the governing law,¹ it is ORDERED that

1. Defendants and their respective agents, servants, employees, contractors, and all firms, corporations, or entities acting under defendants' direction, authority, or control, and all persons acting in concert with any of them, are enjoined preliminarily and permanently from using plaintiff's marks and registered trademarks, or any copy, counterfeit, or imitation of any of them in any manner, including, but not limited to, advertising, promoting, and/or marketing defendants' marketing and design services. In accordance with this, defendants must:

a. Cease using the names ToneCreative LLC, Tone Creative, ToneCreative, Tone Creative Agency, and/or Tone in commerce, on any website, on any social media account, or to offer, advertise, or sell marketing and design services, or other services of any sort;

¹ The relevant legal standards are set out in plaintiff's memorandum of law. Dkt. No. 40; *see also CommScope, Inc. of N. Carolina v. Commscope (U.S.A.) Int'l Grp. Co., Ltd.*, 809 F. Supp. 2d 33 (N.D.N.Y. 2011) (Suddaby, J.).

b. Immediately, and officially change the name of defendant ToneCreative LLC by filing the requisite forms and payment with the Maryland Secretary of State, or immediately and officially terminate defendant ToneCreative LLC by filing the requisite forms and payment with the Maryland Secretary of State;

c. Refrain from creating or establishing any entity or domain name under the names ToneCreative LLC, Tone Creative, ToneCreative, Tone Creative Agency, and/or Tone in any State or territory of the United States to offer, advertise, or sell marketing and design services; and

d. Delete the infringing social media accounts.

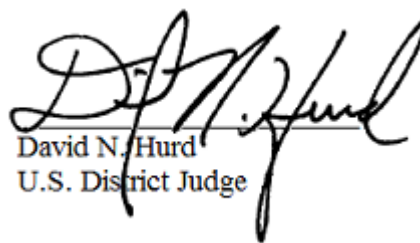
2. Defendants are further ordered to pay damages in the amount of \$26,714.51.

3. Post-judgment interest shall accrue at the statutory rate from the date of entry of this judgment.

The Clerk is directed to enter terminate any pending motions, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: July 26, 2021
Utica, New York.



David N. Hurd
U.S. District Judge